

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

Garden Grove Agency for Community Development

To:	Matthew Fertal	From:	Chet Yoshizaki
Dept:	Director	Dept:	Economic Development
Subject:	ASSIGNMENT AND ASSUMPTION AGREEMENT WITH GARDEN GROVE MXD, LLC	Date:	March 24, 2009

OBJECTIVE

The purpose of this report is for the Garden Grove Agency for Community Development ("Agency") to consider an Assignment and Assumption Agreement ("Assignment Agreement") by and between the Agency and Garden Grove MXD, a Colorado Limited Liability Company ("Assignor" or "Developer"). A copy of the Assignment Agreement is attached hereto as Attachment 1.

BACKGROUND

On October 18, 2007, the Agency entered into an Exclusive Negotiating Agreement with McWhinney Real Estate Services, Inc. ("McWhinney") for the proposed development of a 10.3 acre site generally located at 12721 Harbor Boulevard in the City of Garden Grove ("Proposed Development Site"). McWhinney has prepared a preliminary concept plan for the Proposed Development Site that includes a 600-room hotel with an indoor/outdoor water park.

The Proposed Development Site includes certain real property located at 12591 Harbor Boulevard ("Property"). The Property is currently owned by Leon Elster, Inc., Stuart and Rachel Elster Family Trust, and Leon Elster, Inc., defined Benefit Pension Plan & Trust (collectively, "Seller").

Developer negotiated and entered into a Purchase and Sale Agreement and Joint Escrow Instructions dated as of January 23, 2009 ("Purchase Agreement") with the Seller; a copy of the Purchase Agreement is attached hereto as Attachment 2. Pursuant to the Purchase Agreement, the Seller agreed to convey the Property to Developer for the "Purchase Price" of Two Million Two Hundred Twenty-Five Thousand Dollars (\$2,225,000). Developer and Agency have negotiated the terms of the Assignment Agreement, pursuant to which Developer will assign its rights under the Purchase Agreement to Agency and Agency will assume Developer's rights under the Purchase Agreement, including the right to acquire the Property from Seller for the Purchase Price. By approving and executing the Assignment Agreement, the Agency will be agreeing to the following terms:

- Agency agrees to reimburse Developer for the initial "Deposit" (which Developer paid to Seller pursuant to the Purchase Agreement) of One Hundred Thousand Dollars (\$100,000) within seven (7) days of approval of the Assignment Agreement;
- Upon approval of the Assignment Agreement by the Agency, Agency staff will work to complete its due diligence investigations of the Property pursuant to the Purchase Agreement. The escrow for Agency's acquisition of the Site is expected to close promptly upon satisfactory completion of all due diligence investigations of the Property.
- At the closing, Agency shall pay the balance of the Purchase Price for the Property to Seller in the amount of Two Million One Hundred Twenty-Five Thousand Dollars (\$2,125,000) pursuant to the Purchase Agreement; One Hundred Thousand Dollars (\$100,000) of the Purchase Price has already been paid to Seller by Developer as the initial Deposit and, as noted above, Agency will reimburse Developer for this expense. The Purchase Price is based on an appraisal of the fair market value of the Property.

FINANCIAL IMPACT

- The Agency will pay Two Million Two Hundred Twenty-Five Thousand Dollars (\$2,225,000) for the Property. The proceeds will come from the Agency's Union Bank Loan.

COMMUNITY VISION IMPLEMENTATION

- Improve the aesthetics of the community and eliminate blighting influences.
- Improving the City's economic base through the development of tax generating uses.

RECOMMENDATION

Staff recommends that the Agency:

- Approve the Assignment Agreement with Garden Grove MXD, LLC;
- Authorize the Director and Secretary to execute the Assignment Agreement and to do all actions and execute all additional documents necessary and appropriate to implement the Assignment Agreement on behalf of the Agency; and


ASSIGNMENT AND ASSUMPTION AGREEMENT WITH GARDEN GROVE MXD, LLC

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- Authorize the Finance Officer to draw a warrant in the amount of One Hundred Thousand Dollars (\$100,000) to reimburse Developer for the Deposit immediately upon approval of the Assignment Agreement and to draw a warrant in the amount of Two Million One Hundred Twenty-Five Thousand Dollars (\$2,125,000) plus such other costs payable through escrow and pursuant to the Purchase Agreement in order to close escrow for the purchase of the Property, which is estimated to be less than \$25,000.


CHET YOSHIZAKI
Economic Development Director


By: Greg Blodgett
Senior Project Manager

Attachment 1: Assignment and Assumption Agreement between Agency (as Assignee) and Garden Grove MXD, LLC, a Colorado Limited Liability Company (as Assignor)

Attachment 2: Purchase and Sale Agreement and Joint Escrow Instructions dated as of January 23, 2009 between Garden Grove MXD, LLC, a Colorado Limited Liability Company (as Buyer), and Leon Elster, Inc., Stuart and Rachel Elster Family Trust, and Leon Elster, Inc., defined Benefit Pension Plan & Trust (as Seller)

mm(Staff/PG/Garden Grove MXD,LLC sr 032409v1.doc)

Recommended for Approval


Matthew Fertal
Director

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** ("Assignment") is hereby made as of March 24, 2009, by and between **GARDEN GROVE MXD, LLC**, a Colorado limited liability company ("Assignor"), and **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic ("Assignee").

RECITALS

A. Assignor and Leon Elster, Inc., Stuart and Rachel Elster Family Trust and Leon Elster Inc., Defined Benefit Pension Plan & Trust (collectively, "Seller") have entered into a Purchase and Sale Agreement and Joint Escrow Instructions dated January 23, 2009 ("Agreement"). Pursuant to the Agreement, the Seller agreed to convey to Assignor that certain real property commonly known as 12591 Harbor Boulevard, Garden Grove, California, 92840, Assessor's Parcel Number 231-441-40 ("Property"). The Agreement is attached hereto as Exhibit A and incorporated herein by this reference as though set forth in full. A legal description of the Property is attached hereto as Exhibit B and incorporated herein by this reference as though set forth in full.

B. Assignor and Assignee desire to provide by this Assignment for Assignor to assign to Assignee all of Assignor's rights under the Agreement, subject to the specific terms and conditions of this Assignment.

C. As of the date of this Assignment, the Agreement has been executed by Assignor and Seller, Escrow has been opened, and Assignor has delivered the Deposit into Escrow.

D. All initially capitalized terms shall have the meanings set forth in the Agreement unless expressly otherwise defined herein.

E. The foregoing recitals constitute a substantive part of this Assignment.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption. For good and valuable consideration in hand received, Assignor hereby assigns to Assignee all of its right, title and interest in and to the Agreement, and Assignee hereby accepts such assignment and assumes performance of all terms, covenants and conditions on the part of Assignor to be performed, occurring or arising under the Agreement, from and after the date hereof. The assignment herein is absolute and effective.

(a) Not later than seven (7) business days following the execution of this Agreement by Assignee, Assignee shall pay One Hundred Thousand Dollars (\$100,000) to Assignor in order to reimburse Assignor for the Deposit paid to Seller pursuant to the Agreement.

2. Representations and Warranties of Assignor. Assignor represents and warrants to Assignee, as of the date of this Assignment, that:

(a) Except as provided in this Assignment, the Agreement has not been amended, supplemented or modified in any way, and is in full force and effect and is enforceable in accordance with its terms.

(b) To the best of Assignor's knowledge there is no default, or event which would constitute a default after notice or the passage of time, or both, which exists with respect to the Agreement.

(c) The copy of the Agreement attached hereto as Exhibit A is a complete, current and correct copy of the Agreement.

(d) Assignor has not, in any manner whatsoever, encumbered, pledged, assigned, transferred, conveyed, granted or hypothecated all or any interest in or to all or any of the Agreement to any person or entity, private or governmental, except to Assignee pursuant to this Assignment.

(e) Assignor has the full power and authority to enter into this Assignment and to carry out and perform all the obligations of Assignor under this Assignment. The execution, performance, and delivery of this Assignment by Assignor have been fully authorized by all requisite action on the part of Assignor.

(f) No consent, approval or agreement of any person, entity, party, court or government entity, is required to be obtained by Assignor in connection with the Assignor's execution or delivery of this Assignment or its performance of the terms hereof or its consummation of the transactions provided for herein and in the Agreement, except for the consent of the Assignee.

(g) To Assignor's knowledge, there is no action, suit, proceeding or investigation, or any counter or cross-claim in any action, suit, proceeding or investigation, whether at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind that is pending or threatened against Assignor, or that has been brought by or on behalf of Assignor, that could reasonably be expected to affect adversely the ability of Assignor to perform its obligations under this Assignment or complete the assignment contemplated hereby.

3. Warranties and Representations of Assignee. Assignee represents and warrants to Assignor, as of the date of this Agreement, that:

(a) Assignee has the full power and authority to enter into this Assignment and to carry out and perform all the obligations of Assignee under this Assignment. The execution, performance, and delivery of this Assignment by Assignee have been fully authorized by all requisite action on the part of Assignee.

(b) No consent, approval or agreement of any person, entity, party, court or government entity, is required to be obtained by Assignee in connection with the execution or delivery of this Assignment or the performance of the terms hereof or the consummation of the transactions provided for herein and in the Agreement.

(c) To Assignee's knowledge, there is no action, suit, proceeding or investigation, or any counter or cross-claim in any action, suit, proceeding or investigation, whether at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind that is pending or threatened against Assignee, or that has been brought by or on behalf of Assignee, that could reasonably be expected to affect adversely the ability of Assignee to perform its obligations under this Assignment or complete the assignment contemplated hereby.

4. Assignor Covenants. Assignor shall continue to perform as "Buyer" under the Agreement for the benefit of Assignee. Assignee shall timely respond to all Assignor's requests for approval, consent and payment, so as not to delay such Assignor's performance under the Agreement. Assignor shall not without the prior written consent of Assignee:

- (a) amend, modify or supplement the Agreement;
- (b) make any approvals or consents provided for in the Agreement;
- (c) assign any of Assignor's rights in the Agreement to any third party;
- (d) encumber any of Assignor's rights in the Agreement;
- (e) terminate the Agreement or cause a default under the Agreement; or
- (f) commence litigation against the Seller.

5. Due Diligence. Assignor and Assignee have completed all due diligence and are satisfied with the condition of the Property. Assignee agrees to reimburse Assignor for attorneys' fees actually incurred by Assignor in connection with the review of the condition of title to the Property and/or the review and revision of the Purchase Agreement, in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500); provided that Assignor shall provide bills, invoices, and/or other documentation reasonably acceptable to Assignee evidencing the specific due diligence work for which such charges were incurred.

6. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

7. Governing Law. This Assignment has been entered into, is to be performed entirely within, and shall be governed by and construed in accordance with the laws of the State of California, without reference to choice of law rules.

8. Further Assurances. Each party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.

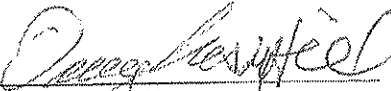
[Signatures appear on following page.]

NOW, THEREFORE, the parties hereto have executed this Assignment as of the date first set forth above.

ASSIGNOR:

GARDEN GROVE MXD, LLC, a
Colorado limited liability company

By: McWhinney Real Estate Services,
Inc., a Colorado corporation,
Manager

By: 
Douglas L. Hill
Chief Operating Officer

ASSIGNEE:

GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT,
a public body, corporate and politic

By: _____
Name: _____
Its: _____

ATTEST:

Secretary, Garden Grove Agency for Community Development

APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth
Counsel, Garden Grove Agency for Community Development

EXHIBIT B

LEGAL DESCRIPTION

Real property in the **City of Garden Grove**, County of **Orange**, State of **California**, described as follows:

THE SOUTH 100.00 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 10 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

APN: **231-441-40**

EXHIBIT A

**PURCHASE AND SALE AGREEMENT
AND
JOINT ESCROW INSTRUCTIONS**

SELLER: Leon Elster, Inc., Stuart and Rachel Elster Family Trust,
and Leon Elster Inc., Defined Benefits Plan *PENSION PLAN TRUST*

BUYER: Garden Grove MXD, LLC, a
Colorado limited liability company

DATED: *January 23*, 2009

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BASIC TERMS

Effective Date: The Effective Date shall be deemed to be January 23, 2009.

Property: Real property generally known as 12591 Harbor Blvd.
Garden Grove, California; 92840; APN 231-441-40

Seller: Leon Elster, Inc., Stuart and Rachel Elster Family Trust and
Leon Elster Inc., Defined Benefits ~~Plan~~ PENSION PLAN & TRUST

Seller's Address: 9201 Wilshire Blvd., #109
Beverly Hills, California 90210
Telephone No. (310) 888-8899
310 891-3275

Seller's Attorney: _____

Attn: _____
Telephone No. _____

Buyer: Garden Grove MXD, LLC,
a Colorado limited liability company

Buyer's Address: 2725 Rocky Mountain Avenue
Suite 200
Loveland, CO 80538
Attention: Trae Rigby
Tel. (970) 776-1047

Buyer's Attorney: Jeffer Mangels Butler & Marmaro, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Attention: M. Guy Maisnik, Esq.
Telephone No. (310) 201-3588

Title Company: First American Title Insurance Company
777 South Figueroa Street
Los Angeles, California 90017
Attention: Gloria Neri, Vice President
Telephone No.: (213) 271-1751
Fax No.: (213) 271-1771
Order No. _____

Escrow Holder: First American Title Insurance Company
777 South Figueroa Street
Los Angeles, California 90017
Attn: Barbara Laffer, Senior Commercial Escrow Officer
Telephone No.: (213) 271-1702

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Fax No.: (818) 450-0135

Purchase Price:	\$2,225,000.00
Deposit:	\$100,000 - five (5) business days after the opening of Escrow
Delivery of Title Report:	By Seller, within seven (7) days after the Effective Date
Delivery of Update of Title Report:	By Seller, five (5) days prior to Closing
Buyer's Title Objection Notice:	Thirty (30) days after Buyer's receipt of the Title Report, or prior to Closing with respect to the Updated Title Report
Seller's Title Cure Period:	Ten (10) days following Seller's receipt of Buyer's Objections (or from the last day of the applicable review period with respect to deemed objections), or five (5) days with respect to the Updated Title Report
Delivery of Survey:	By Seller, within five (5) days after the Effective Date
Delivery of Property Documents:	By Seller, within ten (10) days after the Opening of Escrow
Delivery of Natural Hazard Report:	By Escrow Holder, within fourteen (14) days prior to the expiration of the Contingency Period
Contingency Period:	Ninety (90) days after the Opening of Escrow, Buyer to deliver Buyer's Due Diligence Notice
Contingency Date:	Last day of the Contingency Period
Contingency Period Extension:	Not more than thirty (30) days by Buyer delivering the Contingency Extension Notice at least ten (10) days prior to the end of the initial Contingency Period.
Seller's Due Diligence Notice:	Ten (10) days from receipt of Buyer's Due Diligence Notice
Outside Closing Date (or Closing):	December 15, 2009, unless extended (see Section 3(a)(ii))
Closing Date Extension Notice:	Thirty (30) days prior to December 15, 2009



**PURCHASE AND SALE AGREEMENT
AND
JOINT ESCROW INSTRUCTIONS**

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made and entered into this 23 day of January, 2009 ("Effective Date"), by and between the **GARDEN GROVE MXD, LLC**, a Colorado limited liability company ("Buyer"), and **LEON ELSTER, INC., STUART AND RACHEL ELSTER FAMILY TRUST AND LEON ELSTER INC., DEFINED BENEFIT PLAN** (collectively, "Seller") for acquisition by Buyer of all of Seller's interests, tangible and intangible, in that certain Property defined and described below. The Effective Date shall be only the date on which the Escrow Holder receives fully executed originals of this Agreement from Buyer and Seller, which date Escrow Holder shall insert above.

RECITALS

A. Seller is the fee owner of certain real property located in the City of Garden Grove, California, commonly known as 12591 Harbor Blvd., Garden Grove, CA 92840 and legally described on Exhibit "A" attached hereto and made a part hereof ("Property" as more fully defined in Section 1 below). The Property is improved and currently occupied by one tenant pursuant to a written lease but otherwise there are no rights to occupancy by any person or entity other than Seller.

B. Buyer, and Seller and Buyer are willing to enter into this Agreement for Seller to sell to Buyer and Buyer to acquire from Seller the Property on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Purchase and Sale.** Each of the Basic Terms set forth above are hereby incorporated by reference as part of this Agreement. Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. Seller shall convey to Buyer fee simple, marketable title with the condition of title for the Property meeting the requirements of Section 3 herein for which Seller is responsible. The term "Property" is defined inclusively and collectively for and under this Agreement as the following:

- (a) The fee interest in the Property;
- (b) All improvements to the Property;
- (c) All rights, privileges, easements, licenses and interests, both tangible and intangible, appurtenant to the Property. "Property" shall be deemed to include, without limitation, receivables, tax credits and other credits, all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) derived from the Property that are owned by Seller;
- (d) All moveable and immovable personal property, equipment, supplies, furniture, and fixtures owned by Seller and located at the Property, if any, as of Closing, as set forth in Section 2(c) below; and

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(e) All licenses, permits, authorizations and approvals issued by governmental authorities respect to the Property and the improvements thereon.

The Purchase Price is and shall remain total compensation paid by Buyer to Seller for each and all of Seller's interests in the Property, inclusive of any and all rights or obligations which exist or may arise out of Buyer's acquisition of the Property, including without limitation, Seller's fee interest in the land, all improvements pertaining to the realty, all other improvements, furnishings, fixtures, and equipment located thereon, severance damages, if any, alleged pre-condemnation damages, if any, alleged loss of business goodwill, if any, relocation benefits and assistance, if any, costs, interest, attorney's fees, and any claim whatsoever of, by, or through Seller that may arise out of or relate in any respect to Buyer's acquisition of the Property from Seller. In this regard, Seller acknowledges that based on the advice of its counsel, Seller is and will be fully satisfied that the Purchase Price is fair and adequate consideration for all interests in the Property and that it is all-inclusive compensation for the Property.

2. Payment of Purchase Price.

(a) **Purchase Price.** The Purchase Price for the Property is the sum of Two Million Two Hundred Twenty Five Thousand Dollars (\$2,225,000.00) ("Purchase Price").

(b) **Deposit of Purchase Price into Escrow.** As consideration for the sale of the Property from Seller to Buyer, within the times set forth herein Buyer shall deposit with the escrow officer ("Escrow Holder") immediately available funds in the amount of the Purchase Price, together with funds necessary to cover all of the Buyer Charges described in Section 11(b) and any Prorations described in Section 11(c), as follows:

(i) **Deposit into Escrow.** Buyer shall make an initial deposit into Escrow of an amount equal to One Hundred Thousand Dollars (\$100,000) ("Deposit") within five (5) business days after the opening of Escrow. If this Agreement and the Escrow is terminated by Buyer on or before the Contingency Date pursuant to Buyer's rights hereunder, then Seller has no rights to the Deposit and Escrow Holder shall release, return, and refund in full the Deposit to Buyer. If this Agreement and the Escrow is terminated for any other reason than a Seller Default or failure of a condition after the Contingency Date, then Seller shall retain the Deposit as liquidated damages as more fully set forth in Section 16(c). *SAID DEPOSIT SHALL BE PAID TO SELLER UPON COMPLETION OF CONTINGENCY PERIOD AND SHALL BE NON-REFUNDABLE.*

(ii) **Applicable to Purchase Price.** The Deposit shall be applicable to the Purchase Price upon the Close of Escrow.

(iii) **Deposit of Balance into Escrow.** The balance of the Purchase Price, together with funds necessary to cover all of the Buyer Charges described in Section 11(b) and any Prorations described in Section 11(c), shall be deposited in Escrow by Buyer one (1) business day prior to Closing.

(c) **Possession and Disposition of Seller's FF&E.** Upon the Closing Date, possession of the Property, including land, improvements, furniture, fixtures and equipment, whether immovable or moveable (FF&E), on, upon, or about the Property, shall be deemed to be the property of and in the possession of Buyer. Seller shall have the right to remove or otherwise dispose of all moveable FF&E at the Property not important to the use or operation of the Property prior to the Closing Date. After the Closing Date, Seller acknowledges and agrees that Buyer has the right to

unless there is a seller default or a failure of a condition. As a condition to releasing, Buyer may record a memorandum of purchase agreement in a form reasonably acceptable to Buyer and all leases on the property have been terminated and tenants have abandoned the property.

and may dispose of any FF&E remaining at the Property as Buyer alone sees fit without further notice or any liability whatsoever to Seller.

3. Escrow and Title Matters.

(a) Escrow and Closing.

(i) Opening of Escrow. For the purposes of this Agreement, the escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that Escrow Holder receives a copy of this Agreement fully executed by Seller and Buyer. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental Escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no instrument shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of an instrument and the terms of this Agreement, then the terms of this Agreement shall control. Without limiting the generality of the foregoing, no instrument shall extinguish any obligations imposed by this Agreement or any other contract between Seller and Buyer.

(ii) Closing. For purposes of this Agreement, the "Closing" or "Closing Date" shall be the date the Deed (as defined below) is recorded pursuant to applicable law in the Official Records of Orange County. Unless changed in writing by Buyer and Seller, the Closing shall occur on or before December 15, 2009; provided, that either Buyer or Seller may extend the Closing Date by not more than thirty (30) days by delivery of written notice of such extension to the other at least thirty (30) days prior to the original Closing Date. If the Closing has not, for any reason, occurred by the Closing Date, as may be extended pursuant to the immediately preceding sentence, then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the Closing Date; provided, however, that if there is a Seller Default or a Buyer Default under this Agreement at the time of the termination, then the termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party. If neither party so elects to terminate this Agreement and the Escrow, Escrow Holder shall close the Escrow as soon thereafter as Buyer's and Seller's Conditions Precedent to Closing are satisfied pursuant to Sections 7(a) and 7(b) of this Agreement. *CLOSING IS CONTINGENT UPON WIRE TRANSFER OF MONIES TO SELLERS' BANK.*

(b) Title Matters.

(i) Delivery of Title Report. Seller, at Seller's expense, shall cause Escrow Agent to prepare and deliver to Buyer within seven (7) days after the Effective Date of this Agreement a preliminary title report for the Property with an effective date no earlier than the Effective Date hereof (the "Title Report"), together with legible copies of all exceptions to title disclosed in the Title Report and all exceptions to coverage which would appear in an ALTA (Form B -1970) extended coverage owner's policy of title insurance, if issued (collectively, the "Title Documents"). The title company that underwrites such insurance is hereinafter called the "Title Company". The Title Report shall be updated and again delivered to Buyer not more than five (5) days prior to Closing (the "Updated Title Report").

(ii) Objections. If within thirty (30) days after receipt by Buyer of the Title Report, or prior to Closing with respect to an Updated Title Report, Buyer determines that the status of title reflected therein is unacceptable for any reason in the sole and absolute discretion of

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Buyer, Buyer shall so notify Seller in writing, specifying such objectionable matters (the "Objections"). Buyer may not object to matters contained in an Updated Title Report that were previously accepted by Buyer in the Title Report or previously issued Updated Title Report. If Buyer fails to notify Seller in writing of its approval of the status of title or the Objections within such review period(s), Buyer shall be deemed to have objected to all matters set forth in the Title Report or Updated Title Report, as applicable.

(iii) Cure Period. Seller shall have a period of ten (10) days following the receipt of such Objections (or from the last day of the applicable review period with respect to deemed objections), or five (5) days with respect to the Updated Title Report, to provide a cure acceptable to Buyer for the Objections (the "Cure Period"). Seller and Buyer agree that if the expiration of the Cure Period occurs after the Closing Date, the respective Closing shall automatically be extended until two (2) days after the expiration of the Cure Period. If Seller is unable to cure the Objections or arrange for the cure of the Objections prior to or at Closing and within such Cure Period, Buyer may, within ten (10) days following the expiration of such Cure Period (but prior to Closing), either terminate this Agreement or maintain this Agreement in effect with the right to take title at Closing, and deduct from the Purchase Price at Closing monetary liens or encumbrances of a definite or ascertainable amount, giving Seller notice of such election and tendering performance on its part in accordance with the terms of this Agreement.

(iv) Permitted Exceptions. If Buyer fails to notify Seller of such election within such ten-day period, Buyer will be deemed to have terminated this Agreement, in which case the Deposit shall be immediately returned to Buyer by Escrow Agent and thereafter neither party will have any further obligation hereunder. The matters reviewed and approved by Buyer pursuant to this Section 5, in addition to general real estate taxes for the year of closing, a lien not yet due and payable, are hereinafter referred to collectively as the "Permitted Exceptions".

(v) Seller's Obligations. Seller covenants and agrees that, at its sole cost and expense, prior to or at Closing it will discharge all liens, mortgages, contract for deeds and other encumbrances against the Property, or any claim filed by contractors, suppliers, or workers for pre-closing work performed on the Property, remove all tenants and other occupants, encroachments, mineral leases, or other objectionable matters whether or not recorded against the title to the Property. Further, Seller agrees that it will not record or otherwise allow to be recorded new instruments affecting the Property or amend or allow to be amended any existing agreements, documents or other instruments without Buyer's prior written consent pursuant to this Agreement.

(vi) Title Policy. At Closing, Seller shall cause an ALTA Form B (1970) extended owner's policy of title insurance to be issued to Buyer based on the Title Report and the Updated Title Report to be provided pursuant to Section 5.1 above, which policy shall be in the amount of the total Purchase Price and will insure Buyer's fee simple title to the Property, subject to no exceptions other than the Permitted Exceptions, and containing the endorsement set forth below (the "Title Policy"). The Title Policy must contain an endorsement insuring legal access to the Property from a physically open and publicly dedicated street. Buyer shall not be obligated to proceed to Closing unless the Title Company (or other title insurance company reasonably acceptable to Buyer) is prepared to issue the Title Policy. If no title insurance company is willing to issue the Title Policy subject only to the Permitted Exceptions, Buyer shall have the right, in addition to any other rights and remedies under this Agreement, to:



(A) terminate this Agreement and receive the immediate return of the Deposit from Escrow Agent, or

(B) proceed with Closing.

The parties acknowledge that Buyer may request additional endorsements to the Title Policy, at Buyer's expense.

(vii) Allocation of Cost. Seller shall pay the cost of the Title Report, the Updated Title Report, the premium for an extended coverage owner's Title Policy and all endorsements accepted by the Buyer as a correction of an Objection made by Buyer under Sections (v) and (vi), above.

(viii) Survey. Within five (5) days after the Effective Date, Seller shall deliver to Buyer a full sized, legible copy of any and all surveys of the Property in the possession of Seller or Seller's agents or representatives. If the Title Company requires an additional survey in order to issue the Title Policy, Buyer may, but shall not be obligated to, obtain and provide to the Escrow Agent a current survey of the Property in such form as is required by the Title Company to issue its Title Policy (the "Survey"). If the Survey discloses any encroachment or other title defect which is not a Permitted Exception, the Buyer may object to such encroachment or other title defect and such objection will be handled as provided in Section (b)(ii) above for Buyer's objections to title matters reflected in the Title Report. The cost of the Survey shall be borne by Buyer.

4. Seller's Delivery of Property Documents; Natural Hazard Disclosure Report.

(a) Seller's Delivery of Property Documents. Within ten (10) days after the Opening of Escrow, Seller shall deliver to Buyer complete, true, and legible copies the following items (collectively, "Property Documents"):

(i) Copies of tax bills, including assessments, if any.

(ii) Proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.

(iii) Each and every contract or agreement relating to the Property that will be binding on Buyer or the Property following the Close of Escrow, if any, with the exception of the Title Documents which shall be handled as set forth in Section 3(b).

(iv) any and all documentation regarding the Property which have been prepared by or at Seller's direction, or which are in Seller's possession or control regarding the Property, including, without limitation, copies of any surveys, engineering plans, preliminary and/or final plats, soil, studies, wetland reports, environmental studies, improvement plans, all other consultant materials, and any other documents that would benefit Buyer in its due diligence review of the Property, and complete copies of all leases, conditions, covenants, easements, and copies of all agreements with Governmental Authorities that affect the Property. Seller hereby assigns to Buyer all of the documents and information provided to Buyer by Seller pursuant to this Section 4, which assignment is effective as of the Closing.

A handwritten signature in dark ink, appearing to read "J. E. S. R.", is located in the bottom right corner of the page.

(b) **Natural Hazard Disclosure.** Buyer and Seller acknowledge that Seller is required to disclose if any of the Property lies within the following natural hazard areas or zones: (a) a special flood hazard area designated by the Federal Emergency Management Agency; (b) an area of potential flooding; (c) a very high fire hazard severity zone; (d) a wild land area that may contain substantial forest fire risks and hazards; (e) an earthquake fault or special studies zone; or (f) a seismic hazard zone. Buyer and Seller hereby instruct Escrow Holder or such other third party approved by the parties (who, in such capacity, is herein called the "Natural Hazard Expert") to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations with respect to the natural hazards referred to above and to report the results of its examination to Buyer and Seller in writing. Escrow Holder shall provide a written report prepared by the Natural Hazard Expert regarding the results of its examination no later than fourteen (14) days prior to the expiration of the Contingency Period. The written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller from its disclosure obligations referred to herein, and, for the purposes of this Agreement, the provisions of Civil Code Section 1103.4 regarding the non-liability of Seller for errors and/or omissions not within its personal knowledge shall be deemed to apply, and the Natural Hazard Expert shall be deemed to be an expert dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above.

5. **Buyer's Right of Entry and Tests of Property.** From and after the Effective Date through the earlier to occur of the termination of this Agreement or the Contingency Period, Seller hereby grants to and agrees that Buyer and Buyer's employees, agents, consultants and contractors, (collectively, the "Buyer Parties") shall have the right to enter upon the Property during normal business hours, provided 24 hours prior notice has been given to Seller, for the purpose of conducting any physical and legal (but not feasibility or economic) inspections, investigations, assessments, tests, and studies as Buyer in its sole discretion elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; surveying; soils, seismic and geologic reports; environmental audits, inspections and studies; environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations, including without limitation the presence, release, and/or absence of adverse soils conditions, adverse groundwater conditions, asbestos, lead based paint, and/or Hazardous Materials, as hereinafter more fully defined and described. (collectively, "Tests").

(a) **Conditions to Right of Entry for Tests.** As a condition to conducting any Tests, Buyer shall (i) prior to entry, notify Seller not less than 24 hours in advance of the purpose of the intended entry and provide to Seller the names and affiliations of the entity or person(s) entering the Property (A) for right of entry onto the Property to conduct Tests; (ii) conduct or cause the Buyer Parties to conduct all Tests in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property; (iii) comply with or cause the Buyer Parties to comply with applicable laws and governmental regulations in conducting such Tests; (iv) keep the Property free and clear of materialmen's liens, lis pendens and other liens arising out of entry onto the Property for such Tests performed by or on behalf of Buyer; (v) Buyer to maintain, or Buyer to cause to be maintained by Buyer's contractor(s), workers' compensation insurance on all persons entering the Property for such Tests in the amounts required by the State of California; (vi) Buyer to cause each of its consultants to obtain and maintain commercial general liability insurance policy with a financially responsible insurance company covering any and all liability of such consultant or consultants, Buyer, and its agents, contractors, and employees, with respect to or arising out of the

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Tests conducted at the Property, written on a per occurrence and not claims made basis in a combined single limit of not less than One Million Dollars (\$1,000,000); (vii) promptly repair any and all damage to the Property from such Tests caused by Buyer, or the Buyer Parties and return the Property to its original condition (subject to the Tests conducted) following Buyer's entry. Buyer shall indemnify, defend, and hold harmless Seller and its agents from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) arising from the entry(ies) of Buyer, or the Buyer Parties upon the Property for and related to such entry and Tests or from Buyer's failure to comply with the conditions to entry onto the Property by Buyer or the Buyer Parties for such Tests. Such indemnity shall survive the Close of Escrow or the termination of this Agreement for any reason, but shall be limited to actions and inactions arising from and related to such entry onto the Property and/or the Tests.

6. Due Diligence Notices.

(a) **Buyer's Due Diligence Notice.** Buyer shall notify Seller in writing on or before the expiration of the Contingency Period (which is ninety (90) days from and after the Opening of Escrow) of Buyer's approval or disapproval in its sole and absolute discretion of the Property Documents and of the condition of the Property as disclosed by the Tests ("Buyer's Due Diligence Notice"). Buyer may extend the Contingency Period by not more than thirty (30) days by delivering written notice (the "Contingency Extension Notice") to Seller at least ten (10) days prior to the end of the initial Contingency Period. Any disapproval shall state the matters objected to and the action Seller would be required to take to remediate or cure the objectionable matters to Buyer's satisfaction.

(i) Buyer's failure to deliver the Buyer's Due Diligence Notice on or before the Contingency Date, as may be extended by the timely delivery of the Contingency Extension Notice, shall be deemed Buyer's disapproval of the Property Documents and/or condition of the Property; in no event shall Buyer be deemed to have approved any of the Property Documents or any condition of the Property. In such event of Buyer's failure to deliver its Buyer's Due Diligence Notice, then such failure shall be deemed Buyer's election to not proceed with this purchase and to terminate this Agreement and the Deposit shall be refunded in full to Buyer.

(b) **Seller's Due Diligence Notice.** In the event Buyer timely delivers its Buyer's Due Diligence Notice disapproving any Property Documents or any condition of the Property, Seller shall have ten (10) days from receipt of Buyer's Due Diligence Notice to deliver written notice to Buyer ("Seller's Due Diligence Response Notice") of Seller's election in its sole and absolute discretion to any of the following: (i) decline to remediate all such conditions and to terminate Escrow and this Agreement; or (ii) correct and/or remediate certain (but not all) of the objectionable conditions at its sole cost prior to the Close of Escrow; or (iii) correct and/or remediate all objectionable conditions at its sole cost prior to the Close of Escrow.

(i) If Seller's Due Diligence Response Notice informs Buyer of Seller's election to terminate Escrow (choice (i) in subsection (b) above) rather than remediate all or certain objectionable conditions, then this Agreement shall terminate and the Deposit shall be refunded in full to Buyer.

(A) Seller's failure to deliver Seller's Due Diligence Response Notice shall be deemed Seller's election to terminate this Agreement (choice (i) of subsection (b) above) and in such event the Deposit shall be refunded in full to Buyer.



(ii) If Seller's Due Diligence Response Notice informs Buyer of Seller's election to correct certain of the objectionable conditions (choice (ii) in subsection (b) above), then Buyer shall have the right, by a second written notice delivered to Seller within five (5) days after Buyer's receipt of Seller's Due Diligence Response Notice, to agree to accept the Property subject to one or more of the objectionable conditions that Seller will not correct ("Buyer's Second Due Diligence Notice"), which notice shall list the objectionable conditions remaining that Buyer is willing to accept, in which event Seller may elect, in its sole discretion, to either (A) accept Buyer's Second Due Diligence Notice and proceed to correct the objectionable conditions listed in its notice and proceed with the sale of the Property to Buyer, with Buyer taking at the Close of Escrow subject to such remaining objectionable conditions without any adjustment to or credit against the Purchase Price (subject to Seller's correction of certain conditions to be corrected listed in Seller's Due Diligence Response Notice), or (B) reject Buyer's Second Due Diligence Notice and terminate the Escrow in which event the Deposit shall be refunded in full to Buyer.

(A) If Seller accepts Buyer's Second Due Diligence Notice, then the correction of and/or completion of the remediation or removal of objectionable conditions listed in the Seller's Due Diligence Notice shall be deemed to be one of the Buyer's Conditions Precedent to Closing under Section 7 below, and Buyer and Seller shall exercise good faith efforts to agree in writing on an extended Closing Date, if necessary, to allow those certain conditions to be corrected and completed.

(iii) If Seller's Due Diligence Response Notice informs Buyer of Seller's election to correct all of the objectionable conditions (choice (iii) in subsection (b) above), then the completion of the correction and/or remediation or other removal of all objectionable conditions shall be deemed to be one of the Buyer's Conditions Precedent to Closing under Section 7 below, and Buyer and Seller shall exercise good faith efforts to agree in writing on an extended Closing Date, if necessary, to allow all conditions to be corrected and completed.

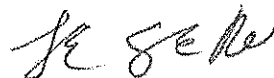
7. Conditions Precedent to Close of Escrow and Termination Rights.

(a) **Buyer's Conditions Precedent.** The Closing and Buyer's obligation to buy the Property and to consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Buyer's Conditions Precedent") on or before the Closing Date or such earlier time as provided for herein, which are for Buyer's benefit only.

(i) No Termination as a Result of Buyer's Due Diligence Review. This Agreement shall not have terminated pursuant to Sections 3(b) or 6 as a result of Buyer's review and inspection of title to, the Property Documents relating to, and the Tests on the Property.

(ii) Buyer's Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide Buyer's Title Policy for the Property upon the Closing, in accordance with Section 3(b).

(iii) Natural Hazard Disclosure Statement. If required by Government Code Sections 8589.3, 8589.4, 51183.5, or Public Resources Code Sections 2621.9, 2694, or 4136, Seller shall deliver to Buyer a Natural Hazard Disclosure Statement pursuant to AB 1195 on or before the date that is thirty (30) days after the Opening of Escrow.



(iv) Delivery of Documents. Seller's delivery of all items and documents described in Section 8.

(v) Vacancy of Property. Seller shall have terminated any leases for space at the Property and any tenants or other occupants shall have permanently vacated the Property.

(vi) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be true and correct in all respects as of the Effective Date and as of the Closing.

(vii) No Seller Default. As of the Closing, there shall be no Seller Default under this Agreement.

(b) **Seller's Conditions Precedent.** The Closing and Seller's obligation to sell the Property and consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Seller's Conditions Precedent") on or before the Closing Date or such earlier time as provided for herein, which are for Seller's benefit only:

(i) No Termination as a Result of Buyer's Due Diligence Review. This Agreement shall not have terminated pursuant to Section 3(b) or 8 as a result of Buyer's review and inspection of title, the Property Documents, and the Property.

(ii) No Buyer Default. As of the Closing, there shall be no Buyer Default under this Agreement.

(iii) Representations and Warranties. All representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects as of the Effective Date and as of the Closing.

(iv) Delivery of Funds. Buyer shall have deposited with Escrow Holder immediately available funds in an amount equal to the Purchase Price (inclusive of the Deposit), the Buyer's Charges, and Buyer's share of Prorations described in Section 11.

(v) Delivery of Documents. Buyer shall have delivered all documents and other items described in Section 9.

(c) **Waiver.** Buyer may at any time or times, at its election in its sole and absolute discretion, waive any of the Buyer's Conditions Precedent set forth in Section 7(a), but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller and Escrow Holder. Seller may at any time or times, at its election in its sole and absolute discretion, waive any of the Seller's Conditions Precedent set forth in Section 7(b) above, but any such waiver shall be effective only if contained in a writing signed by Seller and delivered to Buyer and Escrow Holder.

(d) **Termination.** In the event that each of the Buyer's Conditions Precedent set forth in Section 7(a) is not fulfilled by the outside date for the Closing Date, or such earlier time period as provided for herein or waived by Buyer pursuant to Section 7(c), and provided there is no

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Buyer Default under this Agreement, Buyer may at its option terminate this Agreement and the Escrow opened hereunder. In the event each of the Seller's Conditions Precedent set forth in Section 7(b) is not fulfilled by the outside date for the Closing Date, or such earlier time period as provided for herein or waived by Seller pursuant to Section 7(c), and provided there is no Seller Default under this Agreement, Seller may at its option terminate this Agreement and the Escrow opened hereunder. Notwithstanding the foregoing, if Escrow is not in a position to close due to a party's failure to deposit into Escrow any documents or funds required for the Closing of Escrow, the non-defaulting party shall not have the right to terminate this Agreement without first having given the defaulting party notice of the default and five (5) days to cure the default, with the understanding that it is the parties' desire that this Agreement not terminate as a result of a technicality such as a party's inadvertent failure to timely make a deposit of a document or money into Escrow. No termination under this Agreement shall release either party then in default from liability for such default. In the event this Agreement is terminated, (i) all documents and funds delivered by Seller to Buyer or Escrow Holder shall be returned immediately to Seller, provided there is no Seller Default and Seller is entitled to the return of the Deposit, and, likewise (ii) all documents and funds delivered by Buyer to Seller or Escrow Holder shall be returned immediately to Buyer, subject to the Seller's limited rights, as and if applicable, to retain the Deposit.

(i) If Escrow fails to close due to a party's default or breach, the defaulting or breaching party shall pay all Escrow Cancellation Charges. If Escrow fails to close for any other reason, each party shall pay one-half of all Escrow Cancellation Charges. The term "Escrow Cancellation Charges" shall mean all fees, charges and expenses actually charged by Escrow Holder and the Title Company to the parties in connection with the cancellation of the Escrow and the title order, if any.

8. Seller's Deliveries to Escrow Holder. At least two (2) business days prior to the Closing Date, except as to possession of the Property which shall be delivered as of Closing, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged:

(a) **Seller's Charges.** Immediately available funds in the amount necessary to pay Seller's Charges as set forth in Section 11(a) herein; provided, however, that instead of depositing such funds into Escrow Seller shall have the right to have Seller's Charges deducted from the sale proceeds due to Seller.

(b) **Deed.** The Grant Deed in the form attached hereto as Exhibit B ("Deed").

(c) **Licenses, Certificates, and Permits.** To the extent the same are within the actual or constructive knowledge of, or in the possession, custody or control of, Seller and are applicable and/or transferable to Buyer, all original licenses, certificates and permits pertaining to the Property and beneficial for, or necessary for, or affecting the use or occupancy thereof.

(d) **Keys.** Keys, if any, to all entrance doors and equipment and utility rooms, and any other keys relating to, the Property, including mailbox keys, to the extent such keys are in the possession, custody or control of Seller (Buyer acknowledges that the Property is unimproved, vacant real property);

(e) **FIRPTA/Tax Exemption Forms.** Transferor's Certification of Non Foreign Status in the form attached hereto as Exhibit C ("FIRPTA Certificate") (unless Seller is a "foreign



person," as defined in Section 1445 in the Internal Revenue Code of 1986), together with any necessary tax withholding forms, and a duly executed California Form 593-C, as applicable ("California Exemption Certificate").

(f) **Possession of Property.** At Closing, possession of the Property shall be delivered to Buyer. Seller shall remove from title any encumbrances that Seller is required to remove pursuant to Section 3(b).

(g) **Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.

(h) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Holder.

9. **Buyer's Deliveries to Escrow.** At least two (2) business days prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, by Buyer as appropriate :

(a) **Purchase Price.** The remaining balance of the Purchase Price (i.e., less the Deposit), together with additional funds necessary to pay Buyer's Charges set forth in Section 11(b) herein and Buyer's share of the Prorations set forth in Section 11(c). In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Title Company shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 11(d) hereof. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 597 to Title Company at or immediately after Closing.

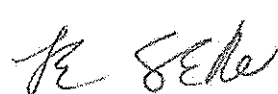
(b) **Final Escrow Instructions.** Buyer's final written Escrow instructions to close Escrow in accordance with the terms of this Agreement.

(c) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Company.

10. **Tax Adjustment Procedure.** Escrow Holder is authorized and is instructed to comply with the following tax adjustment procedure:

(a) **Delinquent Taxes.** Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.

(b) **Proration.** Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller's prorata portion of taxes due at close of Escrow, shall be cleared and paid by Seller, outside Escrow, pursuant to provisions of Section 5082 through 5090 of the Revenue and Taxation Code of the State of California.



(c) **Refund of Taxes.** After the Closing of the Escrow, Seller shall have the right in Seller's sole discretion to apply to the Orange County Tax Collector for refund of any excess property taxes paid by Seller with respect to the Property, so long as no proration or credit for such taxes was provided to Seller through the Escrow,. This refund would apply to the period after the Closing Date and Buyer's acquisition of the Property pursuant to Revenue and Taxation Code Section 5096.7.

11. **Escrow Holder Authorization.** Escrow Holder is authorized to and shall pay, charge and perform the following:

(a) **Seller Charges.**

(i) **Removal of Title Exceptions.** Pay and charge Seller for any amount necessary to cause the removal of any title matters that Seller agreed to remove pursuant to Section 3(b) and to convey fee simple, marketable title pursuant to the requirements of this Agreement.

(ii) **Seller's Share of Charges of Escrow.** Pay and charge Seller for one-half (1/2) of the Escrow fee, any documentary transfer taxes, and all title insurance premiums for the Buyer's Title Policy.

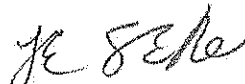
(iii) The charges set forth in this Section 11(a) are herein referred to as "Seller's Charges."

(b) **Buyer Charges.** Pay and charge Buyer for one-half (1/2) of the Escrow fee, all charges for recording the Grant Deed, and any additional title coverage requested by Buyer (collectively, "Buyer's Charges").

(c) **Prorate Revenues and Expenses.** All revenues (if any) and expenses relating to the Property (including, but not limited to, utility costs and expenses, water charges and sewer rents and refuse collection charges) shall be prorated as of the Closing Date (collectively, the "Prorations"). Not less than five (5) business days prior to the Closing, Escrow Holder shall deliver to Buyer and Seller a tentative schedule of prorations for Buyer's and Seller's approval ("Proration and Expense Schedule"). If any prorations made under this Section 11(c) shall require final adjustment after the Closing, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same. Any corrected or adjusted proration shall be paid promptly in cash to the party entitled thereto.

(d) **Tax Requirements.** Escrow Holder shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099 S form, and be responsible for withholding taxes, if any such forms and/or withholding is provided for or required by law.

(i) **California Withholding.** In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code ("Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Escrow Holder shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer at Closing for payment to the California



Franchise Tax Board in accordance with the Tax Code, (ii) Buyer shall deliver three (3) duly executed originals of California Form 597 to Escrow Holder at or immediately after Closing, (iii) two (2) executed originals of California Form 597 shall be delivered by Escrow Holder to Seller, and (iv) on or before the 20th day of the month following the month title to the Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Escrow Holder shall remit such funds withheld from the Purchase Price, together with one (1) executed original of California Form 597 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Escrow Holder as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 597), to the California Franchise Tax Board.

(ii) **FIRPTA Withholding.** Unless Seller is not a "foreign person" under the Foreign Investment in Real Property Transfer Act or an exemption applies, the Escrow Holder shall deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price and shall otherwise comply with all applicable provisions of the Foreign Investment in Real Property Act and any similar state act. Seller agrees to execute and deliver Exhibit C, as directed by Escrow Holder, or any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of the Foreign Investment in Real Property Act and any similar state act and regulation promulgated thereunder.

(e) **Closing Statement.** Escrow Holder is instructed to prepare and provide copies of a proposed closing statement and thereafter the final closing statement ("Closing Statement") to both Seller and Buyer. Escrow Holder shall deliver the estimated Closing Statement to Seller and Buyer no later than three (3) business days prior to the Closing Date.

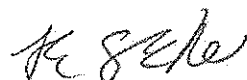
(f) **Escrow Holder Responsibility.** The responsibility of the Escrow Holder under this Agreement is limited to Sections 1 through 12, and 20(b) and (c), and to its liability under any policy of title insurance issued in regard to this transaction.

12. Closing Procedure. On the Closing Date, and provided all of the Buyer's Conditions Precedent and Seller's Conditions Precedent set forth in Sections 7(a) and 7(b) of this Agreement have been satisfied or waived in writing by the appropriate party (per Section 7(c)), Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) **Recording.** Escrow Holder shall cause the Deed to be recorded pursuant to applicable law in Orange County and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) **Disburse Funds.** Escrow Holder shall debit or credit (as provided herein) all charges and Prorations to Buyer and Seller and withhold funds pursuant to Section 11. The Purchase Price (less any amounts required to be withheld as provided in Section 11(d)) shall be distributed by check payable to Seller unless Escrow Holder is instructed otherwise in writing signed by Seller (and, in such event, in accordance with such instructions).

(c) **Documents to Seller.** Escrow Holder shall deliver to Seller a conformed copy of the Deed, and a copy of each other document (or copies thereof) deposited into Escrow by Buyer pursuant hereto.



(d) **Documents to Buyer.** Escrow Holder shall deliver to Buyer the original FIRPTA Certificate, the original California Exemption Certificate (as applicable), a conformed copy of the Deed, the Title Report, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 8.

(e) **Title Company.** Escrow Holder shall cause the Title Company to issue the Buyer's Title Policy to Buyer.

(f) **Closing Statement.** Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party in the form of the Closing Statement prepared pursuant to Section 11(e).

(g) **Informational Reports.** Escrow Holder shall file any informational reports required by Internal Revenue Code Section 6045(e), as amended.

(h) **Possession.** Possession of the Property shall be delivered to Buyer at the Closing.

13. Representations and Warranties.

(a) **Seller's Representations and Warranties.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following representations and warranties as of the Effective Date and continuously as of the Closing, each of which is material and is being relied upon by Buyer (and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder), and all of which shall survive Closing:

(i) Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Closing no additional consent of any individual, director, manager, shareholder, partner, member, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party shall be required for Seller to consummate the transaction contemplated by this Agreement.

(A) In this regard, if applicable, Seller shall deliver or cause delivery to Buyer of true and complete copies of each requisite action or authorization (corporate, trust, partnership or otherwise) that has been taken by Seller or will be taken (immediately after taking such action prior to Closing) when in connection with entering into this Agreement and execution of the instruments referenced herein.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.



(iv) Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument (a) to which Seller is a party, or (b) that affect the Property of which Seller has actual or constructive knowledge, including, but not limited to, any of the Property Documents.

(v) To the best of Seller's actual or constructive knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

(vi) To the best of Seller's actual or constructive knowledge, there are no actions or proceedings pending or threatened against Seller, before any court or administrative agent in any way connected with or relating to the Property, or affecting Seller's ability to fulfill all of its obligations under this Agreement.

(vii) Seller has made no written or oral commitments to or agreements with any governmental authority or agency materially and adversely affecting the Property, or any part thereof, or any interest therein, which will survive the Closing. Seller has entered into no understanding or agreement with any taxing or assessing authority respecting the imposition or deferment of any taxes or assignments respecting the Property.

(viii) To the best of Seller's actual or constructive knowledge, Seller is not in default of its obligations under any contract, agreement or instrument to which Seller is a party pertaining to the Property. To the best of Seller's knowledge, no document supplied to Buyer by Seller contains any untrue statement of a material fact, and to the best of Seller's actual or constructive knowledge no document omits any facts that would be necessary, in the circumstances, to make the document supplied not misleading.

(ix) There are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Property for work performed or commenced for Seller or on Seller's behalf prior to the Effective Date of this Agreement. Seller agrees to indemnify, defend, and hold Buyer and its elected and appointed officials, officers, employees, contractors, and agents harmless from all costs, expenses, liabilities, losses, charges, and fees, including attorney fees, arising from or relating to any such lien or any similar lien claims against the Property and arising from work performed or commenced for Seller or on Seller's behalf at any time prior to Closing.

(x) Except as may be revealed in the Title Report, there are no undisclosed contracts, licenses, commitments, undertakings or other written or oral agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Property that will be binding upon Buyer or the Property after the Closing. There are no oral contracts or other oral agreements for services, supplies or materials, affecting the use, operation, maintenance or management of the Property to which Seller is a party or of which Seller has actual knowledge.

A handwritten signature in dark ink, appearing to read "JE S. [unclear]", is located in the bottom right corner of the page.

(xi) Except as revealed in the Title Report, there are not any written or oral leases or contractual rights or options to lease, purchase, or otherwise enjoy possession, rights or interest of any nature in and to the Property or any part thereof, and subject to Section 15 no person other than Buyer shall have any right of possession to the Property or any part thereof as of the Closing.

(xii) No person, excepting Seller, has possession or any rights to possession or use of the Property or portion thereof. Seller agrees not to lease any portion of the Property, grant any licenses or easements in the Property, or grant any other rights of use or occupancy to the Property without the prior written approval of Buyer, which may be granted or denied in its sole and complete discretion.

(xiii) Except as revealed in the Title Report, Seller shall not allow, consent to, or otherwise permit any encumbrance, lien, or other exception to title to become of record or affect title to the Property during the period from the Effective Date through the Closing Date, unless such encumbrance, lien, or other exception is expressly pre-approved by Buyer in its sole and complete discretion.

(xiv) Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any Hazardous Materials on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property.

(xv) Until the Closing, Seller shall, upon learning of any fact or condition, which would cause any of the warranties and representations in the section not to be true as of the close of Escrow, immediately give written notice of such fact or condition to Buyer.

(xvi) Seller represents to Buyer, and Buyer acknowledges the representation of Seller that Seller has never operated, occupied or developed the Property.

As used herein, the term "actual knowledge" shall mean the actual, current knowledge of Seller and shall not impose any duty of investigation or inquiry and the term "constructive knowledge" shall mean implied knowledge due any notice or other document addressed to and evidenced to have been sent to Seller, and any other document in the Seller's possession and control.

(b) **Subsequent Changes to Seller's Representations and Warranties.** If, prior to the Closing, Buyer or Seller should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Seller set forth herein incorrect or untrue in any respect (collectively, the "Seller Representation Matter"), then the party who has learned, discovered or become aware of such Seller Representation Matter shall promptly give written notice thereof to the other party and Seller's representations and warranties shall be automatically limited to account for the Seller Representation Matter. Buyer shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Buyer reasonably disapproves any such change; provided, however Seller shall first have the opportunity to cure the Seller Representation Matter. In such event if this Agreement is terminated prior to the Closing due to a Seller Representation Matter, then the Deposit shall be refunded in full to Buyer. If Buyer does not elect to terminate this Agreement, Seller's representation shall be



qualified by such Seller Representation Matter and Seller shall have no obligation to Buyer for such Seller Representation Matter.

(c) **Buyer's Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property, Buyer makes the following representations and warranties as of the date hereof and at and as of the Closing, each of which is material and is being relied upon by Seller, the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder, and all of which shall survive Closing:

(i) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Closing no additional consent of any individual, director, manager, shareholder, partner, member, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party shall be required for Buyer to consummate the transaction contemplated by this Agreement.

(A) In this regard, if applicable, Buyer shall deliver or cause delivery to Seller of true and complete copies of each requisite action or authorization (corporate, trust, partnership or otherwise) that has been taken by Buyer or will be taken (immediately after taking such action prior to Closing) when in connection with entering into this Agreement and execution of the instruments referenced herein.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(iv) Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party or by which any of Buyer's properties are bound.

(d) **Subsequent Changes to Buyer's Representations and Warranties.** If, prior to the Closing, Seller or Buyer should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Buyer set forth herein incorrect or untrue in any respect (collectively, the "Buyer's Representation Matter"), then the party who has learned, discovered or become aware of such Buyer's Representation Matter shall promptly give written notice thereof to the other party and Buyer's representations and warranties shall be automatically limited to account for the Buyer's Representation Matter. Seller shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Buyer if Seller reasonably disapproves any such change; provided, however Buyer shall first have the



opportunity to cure the Buyer's Representation Matter. In such event if this Agreement is terminated prior to the Closing Date due to a Buyer Representation Matter, then Seller shall retain the Deposit. If Seller does not elect to terminate this Agreement, Buyer's representation shall be qualified by such Buyer's Representation Matter and Buyer shall have no obligation to Seller for such Buyer's Representation Matter.

14. Conveyance of Property in its Existing Condition. As of the Closing Date, and subject to its rights under Section 5, Buyer acknowledges that will have been given an adequate opportunity to conduct the Tests at the Property. Except as otherwise expressly provided in this Agreement and except as required to be disclosed or otherwise action taken pursuant to federal, state or local laws and regulations, Seller makes no representation or warranty of any kind as to the physical or environmental condition of the Property or in connection with any matter, report or information relating to the condition of the Property, its value, fitness, use, zoning, entitlements, the existence of Hazardous Materials thereon, moratoriums, economic feasibility, developability or any other matter relating to Buyer's proposed use or development of the Property.

15. Seller's Covenants during Escrow Period.

(a) **New Liens or Encumbrances.** Seller shall not further encumber or place any further liens or encumbrances on the Property from the Effective Date and during the Escrow period to the Closing Date without the express, prior written authorization of Buyer in its sole and complete discretion. Further, if the Buyer does consent to a new lien or encumbrance, then such lien or encumbrance on the Property shall not survive the Closing Date, including, but not limited to, right of entry, covenants, conditions, restrictions, easements, liens, options to purchase, options to lease, leases, tenancies, or other possessory interests or rights of use or rights of entry relating to or affecting the Property without the prior written consent of Buyer which consent may be withheld by Buyer in its sole and complete discretion.

(b) **Hazardous Materials.** Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property; provided, however, the foregoing shall not apply to Hazardous Materials that migrate onto the Property from other property or from sources other than Seller or a party acting under the direction or control of Seller. As used in this Agreement, the term "Hazardous Materials" or "Hazardous Material" shall mean any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) lead based paint (viii) polychlorinated biphenyls, (ix) methyl tertiary butyl ether, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.*



(42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

16. Default and Remedies.

(a) **Seller Default.** The term "Seller Default" shall mean Seller's failure to timely perform a material obligation of Seller under this Agreement within five (5) business days following written notice from Buyer describing Seller's failure to perform. In the event of a Seller Default, Buyer, as its sole and exclusive remedies: (i) may terminate this Agreement and receive full repayment and refund of the Deposit, or (ii) shall be entitled to the remedy of specific performance.

(b) **Buyer Default.** The term "Buyer Default" shall mean Buyer's failure to timely perform a material obligation of Buyer under this Agreement within five (5) business days following written notice from Seller describing Buyer's failure to perform. In the event of a Buyer Default, Seller, as its sole and exclusive remedy, may terminate and retain the Deposit.

(c) **Seller's Remedy Limited to Liquidated Damages for Buyer Default.**

LIQUIDATED DAMAGES: IF THE CLOSING OF ESCROW FOR THE PROPERTY DOES NOT OCCUR BECAUSE OF A BUYER DEFAULT UNDER THIS AGREEMENT THAT IS NOT TIMELY CURED, BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH BUYER DEFAULT, WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS A LOSS OF OPPORTUNITY TO ENGAGE IN OTHER POTENTIAL TRANSACTIONS, RESULTING IN DAMAGE AND LOSS TO SELLER. BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF A BUYER DEFAULT, HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT:

FOR A BUYER DEFAULT AFTER THE CONTINGENCY DATE AND PRIOR TO THE CLOSING DATE, THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES.

IN THE EVENT OF AND FOR SUCH UNCURED BUYER DEFAULT AS DESCRIBED ABOVE, SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER FOR AN UNCURED BUYER DEFAULT UNDER THIS AGREEMENT, EXCEPT AS TO THE BUYER'S INDEMNITY OF SELLER PURSUANT TO SECTION 5 HEREIN RELATED TO BUYER'S TESTS ON THE PROPERTY, IF SUCH INDEMNITY IS INVOKED HEREUNDER.

SELLER AND BUYER HAVE BOTH PLACED THEIR INITIALS IN THE SPACES BELOW TO INDICATE THAT THEY HAVE READ, UNDERSTAND, AND AGREE TO THIS LIQUIDATED DAMAGES PROVISION.

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Buyer Initials

Seller Initials

17. **Like Kind Exchange.** Notwithstanding anything to the contrary in this Agreement, Buyer acknowledges and agrees that Seller shall have the right at Closing, in lieu of receiving the Purchase Price (less the Deposit) for the sale of the Property, to exchange the Property ("1031 Exchange") in a transaction intended to qualify as a tax-free exchange under Section 1031 of the Internal Revenue Code of 1986, as amended from time to time, and any regulations, rulings and guidance issued by the Internal Revenue Service (collectively, the "Code"). If Seller elects to effect a 1031 Exchange pursuant to this Section, Seller shall provide written notice to Buyer prior to Closing, in which case Seller shall enter into an exchange agreement and other exchange documents with a "qualified intermediary" (as defined in Treas. Reg. § 1.1031(k)-1(g)(4) of the Code) ("Exchange Party"). Buyer shall execute and deliver such documents as may be required to complete the transactions contemplated by the 1031 Exchange which are in form and substance reasonably acceptable to Buyer, and otherwise cooperate with Seller in all reasonable respects to effectuate the 1031 Exchange. Buyer agrees that if Seller elects to effectuate a 1031 Exchange pursuant to this Section, at Closing, Buyer shall pay the Purchase Price to the Exchange Party and direct the Escrow Holder to disburse the Purchase Price to the Exchange Party. Notwithstanding the foregoing, (a) the 1031 Exchange shall not diminish Buyer's rights, nor increase Buyer's liabilities or obligations, under this Agreement, nor delay the Closing; (b) Seller shall pay for all fees, costs and expenses in connection with the 1031 Exchange; (c) the purchase and sale of the Property shall not be conditioned upon the consummation of the 1031 Exchange; (d) in no event shall Seller be relieved from liability under this Agreement; (e) the consummation of the 1031 Exchange shall be at no liability, risk, fee or expense to the Buyer; and (f) the Seller shall protect, indemnify, defend and hold Buyer free and harmless from all losses, costs, claims, liabilities, lawsuits, demands and damages, including any attorneys' fees and expenses, incurred as a consequence of effecting the transaction through the 1031 Exchange (rather than through the direct sale of the Property by Seller to Buyer).

18. **General Provisions.**

(a) **Loss or Damage to Improvements.** Loss or damage to the Property including any improvements thereon, by fire, other casualty, or acts of God, occurring at any time prior to the Closing of Escrow shall be at the sole risk of Seller.

(b) **Notices.** All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), or sent by certified mail, postage prepaid, return receipt requested, to the address listed below:

If to Seller:

Leon Elster, Inc., Stuart and Rachel Elster Family Trust and
Leon Elster Inc., Defined Benefits ~~Plan~~ PENSION PLAN AND TRUST
9201 Wilshire Blvd., #109
Beverly Hills, CA 90210-5512
Attention: Leon Elster
Tel. (310) 888-8899
Facsimile: (310) 888-8847

With a copy to:

Attention: _____
Tel. _____
Fax No.: _____

If to Buyer:

Garden Grove MXD, LLC
2725 Rocky Mountain Avenue
Suite 200
Loveland, CO 80538
Attention: Trae Rigby
Tel. (970) 776-1047
Fax No.: (970) 635-3003

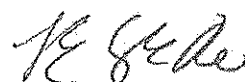
With a copy to:

Jeffer Mangels Butler & Marmaro, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90278
Attention: M. Guy Maisnik, Esq.
Tel. (310) 201-3588
Fax No.: (310) 712-3388

All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written Notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the parties' respective counsels is for information only, is not required for valid Notice and does not alone constitute Notice hereunder.

(c) **Brokers.** Buyer and Seller each represent to the other that no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Each party agrees to and does hereby indemnify and hold the other free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in connection with this Agreement.

(d) **Waiver, Consent and Remedies.** Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder; provided however that failure of a condition hereunder shall not be deemed or determined to be a default unless such condition is also a covenant. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All



rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified in Section 17 relating to Seller's consent and agreement to liquidated damages for a Buyer Default and Buyer's consent and agreement in Section 17(a) to specific performance for a Seller Default, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

(e) **Construction.** The parties acknowledge and agree that (a) each party is of equal bargaining strength; (b) each party has actively participated in the drafting, preparation and negotiation of this Agreement; (c) each party has consulted with such party's own independent counsel and such other professional advisors, if at all, as each party has deemed appropriate, relating to any and all matters contemplated under this Agreement; (d) each party and such party's counsel and advisors, if so elected by the party, have reviewed this Agreement; (e) each party has agreed to enter into this Agreement following such review and the rendering of such advice, if so elected by the party; and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

(f) **Cooperation.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof.

(g) **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between Seller, Buyer and/or Escrow Holder in connection with this Agreement, then as between Buyer and Seller the prevailing party shall be entitled to recover from the losing party all of its costs and expenses including court costs and reasonable attorney's fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

(h) **Time.** Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

(i) **Counterparts; Facsimile Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile signature shall be deemed an original signature.

(j) **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

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(k) **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.

(l) **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

(m) **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

(n) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(o) **Joint and Several.** If a party to this Agreement comprises more than one person or entity, all such persons and entities shall be jointly and severally liable for the payment and the performance of the obligations of such party.

(p) **Exhibits and Schedules.** The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

(q) **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement is executed without reliance on any oral or written statements, representations or promises of any kind which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(r) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(s) **Assignment.** Buyer shall have the right to assign all of Buyer's rights and to delegate all of Buyer's duties and obligations hereunder without obtaining Seller's consent to such assignment or delegation.

(t) **Nondiscrimination.** There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

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<SIGNATURE PAGE TO FOLLOW>

SIGNATURE
PAGE

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IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the day and year first written above.

"SELLER"

Leon Elster, Inc.,

By: Leon Elster
Name: LEON ELSTER
Title: PRESIDENT

Stuart & Elster Rachel Elster, as trustee for the Stuart and
Rachel Elster Family Trust

By: Stuart Elster Rachel Elster
Name: STUART ELSTER RACHEL ELSTER
Title: Trustee

Leon Elster, Inc., Defined Benefit Plan PENSION PLAN TRUST

By: Leon Elster
Name: LEON ELSTER
Title: TRUSTEE

"BUYER"

GARDEN GROVE MXD, LLC,
a Colorado limited liability company

By: McWhinney Real Estate Services, Inc.,
a Colorado corporation, Manager

By: Douglas L. Hill
Douglas L. Hill,
Chief Operating Officer

SIGNATURE
PAGE

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Acceptance by Escrow Holder:

First American Title Insurance Company hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between Leon Elster, Inc., Stuart and Rachel Elster Family Trust, and Leon Elster Inc., Defined Benefits Plan ("Seller"), and the Garden Grove MXD, LLC, a Colorado limited liability company ("Buyer"), and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: _____, 2009

**FIRST AMERICAN TITLE INSURANCE
COMPANY**, as Escrow Holder

By: _____

Name: _____

Its: _____

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EXHIBIT A

LEGAL DESCRIPTION

Real property in the **City of Garden Grove**, County of **Orange**, State of **California**, described as follows:

THE SOUTH 100.00 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 10 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

APN: **231-441-40**

EXHIBIT A

EXHIBIT B

DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Attn: _____

APN: 231-441-40

(Space above this line for Recorder's Use Only)

This document is exempt from the payment of a recording
fee pursuant to Government Code Section 27383.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Leon Elster, Inc., _____, as trustee of the Stuart and Rachel Elster Family Trust, and Leon Elster Inc., a Defined Benefits Plan (collectively, "Grantor"), hereby grant to Garden Grove MXD, LLC, a Colorado limited liability company, that certain real property located in the County of Orange, State of California, more particularly described on Schedule 1 attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of _____, 2009.

GRANTOR:

Leon Elster, Inc.,

By: Leon Elster
Name: LEON ELSTER
Title: PRESIDENT

_____, as trustee for the Stuart and
Rachel Elster Family Trust

By: _____
Name: _____
Title: Trustee

Leon Elster Inc., Defined Benefit Plan ^{PENSION PLAN}
^{AND TRUST}

By: Leon Elster
Name: LEON ELSTER
Title: TRUSTEE

Handwritten mark

EXHIBIT C

FIRPTA CERTIFICATE

TRANSFEROR'S CERTIFICATE OF NON FOREIGN STATUS

To inform Garden Grove MXD, LLC, a Colorado limited liability company ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required upon the transfer of that certain real property to the Transferee by Leon Elster, Inc., Stuart Elster, as trustee of the Stuart and Rachel Elster Family Trust, and Leon Elster Inc., a Defined Benefits Plan ("Transferor"), the undersigned hereby certifies the following:

1. The Transferor is not a foreign person or citizen, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. The Transferor's social security number or U.S. employer identification number is as follows: _____;

3. The Transferor's home or office address is:

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document.

Leon Elster, Inc.

By: Leon Elster
Name: LEON ELSTER
Title: PRESIDENT

Stuart Elster Rachel Elster, as trustee for the Stuart
and Rachel Elster Family Trust

By: Stuart Elster Rachel Elster
Name: STUART ELSTER RACHEL ELSTER
Title: Trustee

Leon Elster Inc., Defined Benefit Plan PENSION PLAN AND TRUST

By: Leon Elster
Name: LEON ELSTER
Title: TRUSTEE

EXHIBIT C
FIRPTA CERTIFICATE

Page 1 of 1

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